

## EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1905(b)(2)(A) of Pub. L. 94-455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1905(d) of Pub. L. 94-455, set out as a note under section 5005 of this title.

**§ 5008. Abatement, remission, refund, and allowance for loss or destruction of distilled spirits**

**(a) Distilled spirits lost or destroyed in bond**

**(1) Extent of loss allowance**

No tax shall be collected in respect of distilled spirits lost or destroyed while in bond, except that such tax shall be collected—

**(A) Theft**

In the case of loss by theft, unless the Secretary finds that the theft occurred without connivance, collusion, fraud, or negligence on the part of the proprietor of the distilled spirits plant, owner, consignor, consignee, bailee, or carrier, or the employees or agents of any of them;

**(B) Voluntary destruction**

In the case of voluntary destruction, unless such destruction is carried out as provided in subsection (b); and

**(C) Unexplained shortage**

In the case of an unexplained shortage of bottled distilled spirits.

**(2) Proof of loss**

In any case in which distilled spirits are lost or destroyed, whether by theft or otherwise, the Secretary may require the proprietor of the distilled spirits plant or other person liable for the tax to file a claim for relief from the tax and submit proof as to the cause of such loss. In every case where it appears that the loss was by theft, the burden shall be upon the proprietor of the distilled spirits plant or other person responsible for the distilled spirits tax to establish to the satisfaction of the Secretary that such loss did not occur as the result of connivance, collusion, fraud, or negligence on the part of the proprietor of the distilled spirits plant, owner, consignor, consignee, bailee, or carrier, or the employees or agents of any of them.

**(3) Refund of tax**

In any case where the tax would not be collectible by virtue of paragraph (1), but such tax has been paid, the Secretary shall refund such tax.

**(4) Limitations**

Except as provided in paragraph (5), no tax shall be abated, remitted, credited, or refunded under this subsection where the loss occurred after the tax was determined (as provided in section 5006(a)). The abatement, remission, credit, or refund of taxes provided for by paragraphs (1) and (3) in the case of loss of distilled spirits by theft shall only be allowed to the extent that the claimant is not indemnified against or recompensed in respect of the tax for such loss.

**(5) Applicability**

The provisions of this subsection shall extend to and apply in respect of distilled spirits

lost after the tax was determined and before completion of the physical removal of the distilled spirits from the bonded premises.

**(b) Voluntary destruction**

The proprietor of the distilled spirits plant or other persons liable for the tax imposed by this chapter or by section 7652 with respect to any distilled spirits in bond may voluntarily destroy such spirits, but only if such destruction is under such supervision and under such regulations as the Secretary may prescribe.

**(c) Distilled spirits returned to bonded premises**

**(1) In general**

Whenever any distilled spirits on which tax has been determined or paid are returned to the bonded premises of a distilled spirits plant under section 5215(a), the Secretary shall abate or (without interest) credit or refund the tax imposed under section 5001(a)(1) (or the tax equal to such tax imposed under section 7652) on the spirits so returned.

**(2) Claim must be filed within 6 months of return of spirits**

No allowance under paragraph (1) may be made unless claim therefor is filed within 6 months of the date of the return of the spirits. Such claim may be filed only by the proprietor of the distilled spirits plant to which the spirits were returned, and shall be filed in such form as the Secretary may by regulations prescribe.

**(d) Distilled spirits withdrawn without payment of tax**

The provisions of subsection (a) shall be applicable to loss of distilled spirits occurring during transportation from bonded premises of a distilled spirits plant to—

(1) the port of export, in case of withdrawal under section 5214(a)(4);

(2) the customs manufacturing bonded warehouse, in case of withdrawal under section 5214(a)(6);

(3) the vessel or aircraft, in case of withdrawal under section 5214(a)(7);

(4) the foreign-trade zone, in case of withdrawal under section 5214(a)(8); and

(5) the customs bonded warehouse in the case of withdrawal under sections 5066 and 5214(a)(9).

The provisions of subsection (a) shall be applicable to loss of distilled spirits withdrawn from bonded premises without payment of tax under section 5214(a)(10) for certain research, development, or testing, until such distilled spirits are used as provided by law.

**(e) Other laws applicable**

All provisions of law, including penalties, applicable in respect of the internal revenue tax on distilled spirits, shall, insofar as applicable and not inconsistent with subsection (c), be applicable to the credits or refunds provided for under such subsection to the same extent as if such credits or refunds constituted credits or refunds of such tax.

**(f) Cross reference**

For provisions relating to allowance for loss in case of wine spirits withdrawn for use in wine production, see section 5373(b)(3).

(Added Pub. L. 85-859, title II, §201, Sept. 2, 1958, 72 Stat. 1323; amended Pub. L. 89-44, title VIII, §805(a), June 21, 1965, 79 Stat. 160; Pub. L. 90-630, §1, Oct. 22, 1968, 82 Stat. 1328; Pub. L. 91-659, §§1, 2(a), (b), Jan. 8, 1971, 84 Stat. 1964; Pub. L. 94-273, §47, Apr. 21, 1976, 90 Stat. 382; Pub. L. 94-455, title XIX, §§1905(a)(2), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1818, 1834; Pub. L. 95-176, §§2(f), 4(e), Nov. 14, 1977, 91 Stat. 1364, 1366; Pub. L. 96-39, title VIII, §807(a)(6), July 26, 1979, 93 Stat. 281; Pub. L. 105-34, title XIV, §1411(a), Aug. 5, 1997, 111 Stat. 1046.)

### Editorial Notes

#### PRIOR PROVISIONS

A prior section 5008, act Aug. 16, 1954, ch. 736, 68A Stat. 602, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85-859. See sections 5205(a), (g) and 5604(a)(1) of this title.

Provisions similar to those comprising subsecs. (a)(1) to (4) and (f)(1), (2) of this section were contained in prior sections 5011(a)(1) to (4), 5023, 5247(e) and 5522(b), act Aug. 16, 1954, ch. 736, 68A Stat. 604, 606, 648, 679, prior to the general revision of this chapter by Pub. L. 85-859.

#### AMENDMENTS

1997—Subsec. (c)(1). Pub. L. 105-34 substituted “on which tax has been determined or paid” for “withdrawn from bonded premises on payment or determination of tax”.

1979—Subsec. (a)(1)(C). Pub. L. 96-39, §807(a)(6)(A), added subpar. (C).

Subsec. (a)(5). Pub. L. 96-39, §807(a)(6)(B), substituted “before” for “prior to the completion” and struck out provisions relating to the applicability of this subsection where the loss occurred after the time prescribed for the withdrawal of the distilled spirits from the bonded premises under section 5006(a)(2) and relating to the applicability of this paragraph to any loss of distilled spirits for which abatement, remission, credit, or refund of tax is allowed under subsec. (c).

Subsec. (b). Pub. L. 96-39, §807(a)(6)(C), struck out “(1) Distilled spirits in bond” before “The proprietor of” and provisions relating to distilled spirits withdrawn for rectification or bottling.

Subsec. (c). Pub. L. 96-39, §807(a)(6)(C), added subsec. (c). Former subsec. (c), which related to loss of distilled spirits withdrawn from bond for rectification or bottling, was struck out.

Subsec. (d). Pub. L. 96-39, §807(a)(6)(D), redesignated subsec. (f) as (d). Former subsec. (d), which related to distilled spirits returned to bonded premises, was struck out.

Subsec. (e). Pub. L. 96-39, §807(a)(6)(D), (E), redesignated subsec. (g) as (e) and substituted “subsection (c)” for “subsections (b)(2), (c), and (d)” and “under such subsection” for “under such subsections”. Former subsec. (e), which related to samples of distilled spirits used for analysis or testing by United States, was struck out.

Subsec. (f). Pub. L. 96-39, §807(a)(6)(D), redesignated subsec. (h) as (f). Former subsec. (f) redesignated (d).

Subsecs. (g), (h). Pub. L. 96-39, §807(a)(6)(D), redesignated subsecs. (g) and (h) as (e) and (f), respectively.

1977—Subsec. (d). Pub. L. 95-176, §2(f), reenacted par. (1) and substituted heading “General” for “Allowance of tax” and “(or the tax equal to such tax imposed under section 7652)” for “or under section 7652”; added pars. (2) and (3); and redesignated as par. (4) provisions of former par. (2) and inserted reference to allowance of claims under par. (2) or (3).

Subsec. (f)(5). Pub. L. 95-176, §4(e), added par. (5).

1976—Subsec. (b)(1). Pub. L. 94-455, §§1905(a)(2)(A), 1906(b)(13)(A), inserted “or by section 7652” after “tax imposed by this chapter” and struck out “or his delegate” after “Secretary”.

Subsec. (b)(2). Pub. L. 94-455, §§1905(a)(2)(B), 1906(b)(13)(A), struck out “or his delegate” after “Secretary” and inserted “, or under section 7652” after “under subpart B of this part”.

Subsec. (c)(1). Pub. L. 94-455, §§1905(a)(2)(C), 1906(b)(13)(A), struck out “or his delegate” after “Secretary” wherever appearing and inserted “or under section 7652” after “under section 5001(a)(1)”.

Subsec. (c)(2), (3). Pub. L. 94-273 substituted “computation year” for “fiscal year” wherever appearing.

Subsec. (c)(5). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (d)(1). Pub. L. 94-455, §§1905(a)(2)(C), (D), 1906(b)(13)(A), struck out “on or after July 1, 1959,” after “from bonded premises,” and “or his delegate” after “Secretary” and inserted “or under section 7652” after “under section 5001(a)(1)”.

1971—Subsec. (b)(2). Pub. L. 91-659, §2(a), struck out condition that the distilled spirits can be destroyed only before bottling and permitted destruction after completion of bottling so long as the distilled spirits are on the bottling premises and added taxes imposed under subpart B of this Part as additional taxes which can be claimed for abatement, remission, credit or refund.

Subsec. (c)(1)(A). Pub. L. 91-659, §1, added cl. (iii).

Subsec. (c)(5). Pub. L. 91-659, §2(b), permits distilled spirits returned to bottling premises to be treated for purposes of the various loss provisions as though they had not been removed from the bottling premises.

1968—Subsec. (c)(1). Pub. L. 90-630 inserted provisions allowing abatement, remission, and refund if the casualty loss occurs after completion of the packaging but before the spirits have been removed from the premises of the distilled spirits plant to which the spirits were removed from bond.

1965—Subsec. (d)(2). Pub. L. 89-44 struck out final clause prohibiting the allowance of a claim in respect to any distilled spirits withdrawn from bonded premises of a distilled spirits plant more than 6 months prior to the date of such return.

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title XIV, §1411(b), Aug. 5, 1997, 111 Stat. 1046, provided that: “The amendment made by subsection (a) [amending this section] shall take effect on the 1st day of the 1st calendar quarter that begins at least 180 days after the date of the enactment of this Act [Aug. 5, 1997].”

#### EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-39 effective Jan. 1, 1980, see section 810 of Pub. L. 96-39, set out as a note under section 5001 of this title.

#### EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-176 effective on first day of first calendar month beginning more than 90 days after Nov. 14, 1977, see section 7 of Pub. L. 95-176, set out as a note under section 5003 of this title.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1905(a)(2) of Pub. L. 94-455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1905(d) of Pub. L. 94-455, set out as a note under section 5005 of this title.

#### EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 91-659 effective on first day of first calendar month which begins more than 90 days after Jan. 8, 1971, see section 6 of Pub. L. 91-659, set out as an Effective Date note under section 5066 of this title.

#### EFFECTIVE DATE OF 1968 AMENDMENT

Pub. L. 90-630, §4, Oct. 22, 1968, 82 Stat. 1329, provided that:

“(a) For purposes of subsection (b), the effective date of this Act is the first day of the first calendar month which begins more than 90 days after the date of the enactment of this Act [Oct. 22, 1968].

“(b) The amendments made by the first section of this Act [amending this section] shall apply only to losses sustained on or after such effective date. The amendments made by section 2 [amending section 5062 of this title and section 1313 of Title 19, Customs Duties] shall apply only to articles exported on or after such effective date. The amendments made by section 3 [amending section 5232 of this title] shall apply only to withdrawals from customs custody on or after such effective date.”

#### EFFECTIVE DATE OF 1965 AMENDMENT

Pub. L. 89-44, title VIII, §805(g)(1), June 21, 1965, 79 Stat. 162, provided that: “The amendments made by subsections (a), (c), (e), and (f)(6) [amending this section and sections 5062, 5215, and 5608 of this title] shall take effect on July 1, 1965.”

#### DISTILLED SPIRITS RETURNED TO BONDED PREMISES OF DISTILLED SPIRITS PLANT DURING 1980

Subsec. (c)(1) of this section to be treated as including a reference to section 5041 of this title with respect to distilled spirits returned to the bonded premises of distilled spirits plants during 1980, see section 808(d) of Pub. L. 96-39, set out as a note under section 5061 of this title.

#### [§ 5009. Repealed. Pub. L. 96-39, title VIII, § 807(a)(7), July 26, 1979, 93 Stat. 281]

Section, added Pub. L. 85-859, title II, §201, Sept. 2, 1958, 72 Stat. 1327; amended Pub. L. 94-455, title XIX, §1905(a)(3), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1818, 1834, related to drawback on exportation of distilled spirits in casks or packages.

A prior section 5009, act Aug. 16, 1954, ch. 736, 68A Stat. 603, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85-859. See sections 5205(c)(1), (f), (i)(4) and 5206(c) of this title.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 1980, see section 810 of Pub. L. 96-39, set out as an Effective Date of 1979 Amendment note under section 5001 of this title.

#### § 5010. Credit for wine content and for flavors content

##### (a) Allowance of credit

###### (1) Wine content

On each proof gallon of the wine content of distilled spirits, there shall be allowed a credit against the tax imposed by section 5001 (or 7652) equal to the excess of—

(A) \$13.50, over

(B) the rate of tax which would be imposed on the wine under section 5041(b) but for its removal to bonded premises.

###### (2) Flavors content

On each proof gallon of the flavors content of distilled spirits, there shall be allowed a credit against the tax imposed by section 5001 (or 7652) equal to \$13.50.

###### (3) Fractional part of proof gallon

In the case of any fractional part of a proof gallon of the wine content, or of the flavors content, of distilled spirits, a proportionate credit shall be allowed.

##### (b) Time for determining and allowing credit

###### (1) In general

The credit allowable by subsection (a)—

(A) shall be determined at the same time the tax is determined under section 5006 (or 7652) on the distilled spirits containing the wine or flavors, and

(B) shall be allowable at the time the tax imposed by section 5001 (or 7652) on such distilled spirits is payable as if the credit allowable by this section constituted a reduction in the rate of tax.

###### (2) Determination of content in the case of imports

For purposes of this section, the wine content, and the flavors content, of imported distilled spirits shall be established by such chemical analysis, certification, or other methods as may be set forth in regulations prescribed by the Secretary.

##### (c) Definitions

For purposes of this section—

###### (1) Wine content

###### (A) In general

The term “wine content” means alcohol derived from wine.

###### (B) Wine

The term “wine”—

(i) means wine on which tax would be imposed by paragraph (1), (2), or (3) of section 5041(b) but for its removal to bonded premises, and

(ii) does not include any substance which has been subject to distillation at a distilled spirits plant after receipt in bond.

###### (2) Flavors content

###### (A) In general

Except as provided in subparagraph (B), the term “flavors content” means alcohol derived from flavors of a type for which drawback is allowable under section 5114.

###### (B) Exceptions

The term “flavors content” does not include—

(i) alcohol derived from flavors made at a distilled spirits plant,

(ii) alcohol derived from flavors distilled at a distilled spirits plant, and

(iii) in the case of any distilled spirits product, alcohol derived from flavors to the extent such alcohol exceeds (on a proof gallon basis) 2½ percent of the finished product.

(Added Pub. L. 96-598, §6(a), Dec. 24, 1980, 94 Stat. 3488; amended Pub. L. 98-369, div. A, title I, §27(a)(2), July 18, 1984, 98 Stat. 507; Pub. L. 100-647, title V, §5063(a), Nov. 10, 1988, 102 Stat. 3681; Pub. L. 101-508, title XI, §11201(a)(2), Nov. 5, 1990, 104 Stat. 1388-415; Pub. L. 109-59, title XI, §11125(b)(14), Aug. 10, 2005, 119 Stat. 1956.)

#### Editorial Notes

##### PRIOR PROVISIONS

A prior section 5010, act Aug. 16, 1954, ch. 736, 68A Stat. 603, related to miscellaneous stamp provisions,